IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.498 OF 1997

Smt. Ratnabai Krishna Chorge)
R/o. Chorge House, Trombe,)
Koliwada, Trombay, Bombay.) ... Petitioner

Vs.

1. Janardan Dharma Manaji,)
D-15, Room No.114, Pratiksha)
Nagar Chawl, Sion, Mumbai -)
400 022.)

2. Harishchandra Koli,)
R/o. Room No.1, Chorge House,)
Trombay Koliwada, Trombay,)
Bombay - 400 088.) ... Respondents

Mr. D.S. Sawant for the petitioner.

None for the respondents.

CORAM: SMT. RANJANA DESAI, J.

DATED: 18TH JANUARY, 2005.

ORAL JUDGMENT:-

1. The petitioner filed an application under section 13A(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, "the Bombay Rent Act") before the Competent Authority (Rent Act), Konkan Division, Bombay being Case No.22 of 2002. It is the case of the petitioner that she is the owner and landlady of a structure known as Chorge House, situated at Trombay, Koliwada, Bombay - 400 088. According to the petitioner, sometimes in the month of October, 1990, or thereabouts, she allowed respondent 1, who is her nephew to use and occupy one room admeasuring about 18’ x 15’ at the rear side of the said Chorge House (for convenience,

"the said premises") on monthly compensation of Rs.125/-. According to the petitioner, since she and respondent 1 are related, no written agreement of leave and licence was executed between the two. She further contended that respondent 2 is inducted by respondent 1 in the said premises sometimes in August 1991 and there is no privity of contract between them. Respondent 2 is a trespasser. According to the petitioner, respondent 1 paid compensation only upto 1991 and, thereafter, he did not pay any compensation to her. On these grounds, the petitioner prayed for possession of the said premises.

2. Both the respondents filed joint written statement stating that there is no relationship of landlord and licencee between the parties. According to the respondents, the said premises belonged to one Davji Dadu Koli, who died on or about 17/2/1961. The said premises stood in the name of Devji Dadu Koli and his wife Ladkibai Devji Koli. According to the respondents in July, 1984, respondent 1 entered into an agreement with said Ladkibai to purchase the said premises for a sum of Rs.10,000/-. He paid an advance of Rs.5,000/-. The balance was payable on execution of sale deed after transfer of the said premises in the records of the City Survey. The said Ladkibai died on 21/9/1986 before the property could be transferred in her name and, hence, respondent 1 could not get the said deed of conveyance executed. Respondent 1 was in need of money. So he sold the said premises to respondent 2 for consideration of Rs.30,000/-. Respondent 1 accepted Rs.20,000/- and

executed an affidavit to the effect that after he gets the balance amount, he has to execute the conveyance in favour of respondent 2. Respondent 2 denied that he is a trespasser in the said premises.

3. Neither the petitioner nor the respondents examined themselves before the Competent Authority. On behalf of the petitioner, her constituted attorney Hari Chorge was examined. After perusing his evidence, the Competent Authority by the impugned order dismissed the application of the petitioner and, hence, this petition.

4. I have heard, at some length, Mr. Sawant, the learned counsel appearing for the petitioner. Mr. Sawant contended that the leave and licence agreement under section 13A(2) can be oral. He submitted that the evidence of the petitioner's constituted attorney Hari Chorge clearly establishes that there was an oral leave and licence agreement between the petitioner and respondent 1 and that respondent 1 paid compensation only upto April, 1991. Thereafter, respondent 1 did not pay any compensation and inducted respondent 2 in the said premises. Respondent 1 was supposed to vacate the said premises in August 1991. Despite demands made by the petitioner, respondent 1 refused to pay the compensation. He refused to vacate the said premises. The learned counsel submitted that therefore the Competent Authority ought to have directed the respondents to hand over possession of the said premises to the petitioner.

5. I am unable to accept the submission of the learned counsel that there was an oral leave and licence agreement between the petitioner and respondent 1. That in the context of section 13A2(3), there can be an oral leave and licence agreement, can hardly be disputed. In this connection, reference can be made to the judgment of this court in **Dinkar Keshav Deshmukh v. Vasantdada Sugar Institute, Pune, 1997(1) Mah. L.J.188**. Explanation (b) of section 13A2(3) of the Bombay Rent Act states that an agreement of licence in writing shall be conclusive evidence of the fact stated therein. Necessarily, therefore, existence of an oral leave and licence must be proved by adducing cogent evidence. The question is whether on the basis of the evidence adduced by the petitioner, it can be said that there was an oral leave and licence agreement between the petitioner and respondent 1. It is pertinent to note that the petitioner, who claims to have entered into an oral leave and licence agreement with respondent 1 has not examined herself. She has examined her constituted attorney Hari Chorge. Hari Chorge in his evidence has categorically stated that there was no leave and licence agreement between the petitioner and respondent 1. In view of this admission, the petitioner cannot be heard to say that there was an oral leave and licence agreement between her and respondent 1. No other evidence is led by the petitioner to substantiate her contentions. So far as the ownership of the said premises and the case of respondent 1 that he had purchased the said premises from Ladkibai and sold them to respondent 2 is concerned, the

Competent Authority has no jurisdiction to give a decision on these aspects. The question of title can only be decided by the civil court. In view of this, keeping the question of title open, the present revision application will have to be dismissed and is dismissed as such.

6. Rule discharged.

(SMT. RANJANA DESAI, J.)